

EXTRACTS FROM MINUTES OF THE CITY COUNCIL

A regular meeting of the City Council of the City of Durham, North Carolina, was duly held on April 4, 2016 at 7:00 p.m. in the City Council Chamber at City Hall, 101 City Hall Plaza, Durham, North Carolina. Mayor William V. Bell presiding.

The following members were present:

The following members were absent:

*

*

*

*

*

Council Member _____ moved that the following resolution, copies of which having been made available to the City Council, be adopted:

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA,
APPROVING A CONTRACT AND A DEED OF TRUST WITH RESPECT THERETO AND
DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

WHEREAS, the City of Durham, North Carolina (the “City”) is a validly existing municipal corporation of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the City has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) finance the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available for such construction;

WHEREAS, the City Council of the City of Durham, North Carolina (the “City Council”), has previously determined that it was in the best interest of the City (a) to enter into a short-term installment financing contract (the “Interim Contract”) with PNC Bank, National Association (the “Bank”) in order to obtain funds to (1) pay the capital costs of the construction of a new police headquarters and 911 facility (the “Police Headquarters”), (2) refinance upgrades to the City’s public safety radio infrastructure (the “Radio Infrastructure”), (3) pay the capital costs of other general government projects (the “General Government Projects,” and together with the Police Headquarters and the Radio Infrastructure, the “Projects”) and (4) pay the costs of execution and delivery of the Interim Contract and (b) to enter into a deed of trust and security agreement (the “Interim Deed of Trust”) related to the City’s fee simple interest in the real property on which the Police Headquarters will be located (the “Site”) that will provide security for the City’s obligations under the Interim Contract;

WHEREAS, the City expects to discharge this Interim Contract prior to its maturity on April 15, 2019, at which time the City will (a) execute and deliver another installment financing contract with either New Durham Corporation or a financial institution to be determined (the “Long-Term Contract,” and together with the Interim Contract, the “Contracts”) in order to refinance the Interim Contract and pay the costs of execution and delivery of the Long-Term Contract and (b) execute and deliver a deed of trust and security agreement (the “Long-Term Deed of Trust,” and together with the Interim Deed of Trust, the “Deeds of Trust”) related to the Site to secure the City’s obligations under the Long-Term Contract;

WHEREAS, the City Council conducted a public hearing with respect to the Project on March 21, 2016 to receive public comments on the proposed financing, the Contracts and the Deeds of Trust and the City has filed an application with the LGC for approval of the LGC with respect to the City entering into the Contracts;

WHEREAS, there has been presented to the City Council the forms of the Interim Contract and the Interim Deed of Trust (collectively, the “Instruments”), copies of which are attached hereto, which the City proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing at variable rate of interest and for a maximum principal amount of \$95,000,000, all as further specified in the Instruments;

WHEREAS, it appears that each of the Instruments is in appropriate form and is an appropriate instrument for the purposes intended;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF CHATHAM, NORTH CAROLINA, AS FOLLOWS:

Section 1. Ratification of Prior Actions. All actions of the City, the City Manager, the Finance Director of the City and the City Clerk and their respective designees in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. Approval, Authorization and Execution of Interim Contract. The City hereby approves the financing of the Project in accordance with the terms of the Interim Contract, which will be a valid, legal and binding obligation of the City in accordance with its terms. The City hereby approves the amount advanced by the Bank to the City pursuant to the Contract in an aggregate principal amount not to exceed \$95,000,000. The form, terms and content of the Interim Contract are in all respects authorized, approved and confirmed, and the Chairman, the City Manager, the Finance Director of the City or the City Clerk or their respective designees are authorized, individually or collectively, empowered and directed to execute and deliver the Interim Contract for and on behalf of the City, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Interim Contract, the Chairman, the City Manager, the Finance Director of the City or the City Clerk or their respective designees, either individually or collectively, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Interim Contract as executed.

Section 3. Approval, Authorization of Interim Deed of Trust. The form, terms and content of the Interim Deed of Trust are in all respects authorized, approved and confirmed, and the Mayor, the City Manager, the Finance Director of the City or the City Clerk or their respective designees are authorized, individually or collectively, empowered and directed to execute and deliver the Interim Deed of Trust for and on behalf of the City, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Interim Deed of Trust, the Mayor, the City Manager, the Finance Director of the City or the City Clerk or their respective designees, either individually or collectively, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Interim Deed of Trust as executed. The City hereby approves the grant of the Security Interest pursuant to the Interim Deed of Trust.

Section 4. Repealer. All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are hereby repealed.

Section 5. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration does not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Effective Date. This Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA)
)
CITY OF DURHAM) SS:

I, D. Ann Gray, duly appointed City Clerk of the City of Durham, North Carolina, *DO HEREBY CERTIFY*, that the foregoing is a true and accurate copy of Resolution No. _____ which was adopted by the City Council of the City of Durham, North Carolina, at its regular meeting held on April 4, 2016, to become effective on April 4, 2016, and that such Resolution No. _____ has been duly recorded in the minutes of the City.

WITNESS my hand and the corporate seal of the City of Durham, North Carolina, this ____ day of April, 2016.

(SEAL)

D. Ann Gray
City Clerk of the
City of Durham, North Carolina